

## **CONSULTATION PAPER**

# **Revised guidelines on the submission of written comments to public inquiries and public consultations**

*Issued on Tuesday 8th April 2014*

# Contents

1 INTRODUCTION ..... 1

ATTACHMENT A: DRAFT REVISED GUIDELINES ..... 2

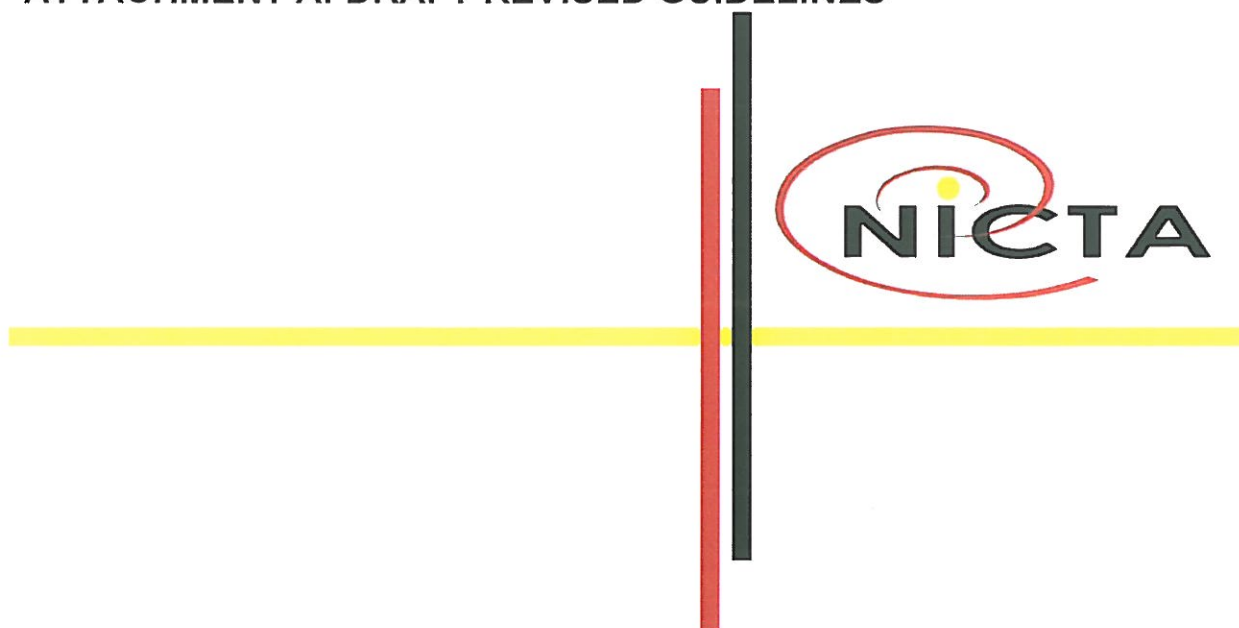
## 1 INTRODUCTION

Following its recent experiences conducting a number of public inquiries NICTA has revised its *Guidelines on the submission of written comments to public inquiries and public consultations* and proposes to make a number of minor amendments to clarify its expectations and processes.

The main purpose of the amendments is to clarify the process for assessing claims of confidentiality and for ensuring that NICTA is well placed to create a redacted version of a submission reflecting the claims to confidentiality that NICTA is prepared to accept.

Interested parties are invited to submit written comments on the draft revised guidelines at Attachment A. Written submissions should be submitted via email to [consultation.submission@nicta.gov.pg](mailto:consultation.submission@nicta.gov.pg) and must be received by noon Tuesday noon 6<sup>th</sup> May 2014. Copies of all submissions received will be published on NICTA's Public Register consistent with the requirements on NICTA under subsection 229(3) of the Act.

**ATTACHMENT A: DRAFT REVISED GUIDELINES**



**Guidelines  
on the submission of  
written comments to  
public consultations and  
public inquiries**

**April 2014**

## Introduction

These guidelines have been made by the National Information and Communications Technology Authority (NICTA) under section 218 of the *National Information and Communications Technology Act 2009* (the Act) to provide guidance to ICT licensees regarding their submission of written comments and documents to:

- any public consultation conducted by NICTA under section 229 of the Act; and
- any public inquiry conducted by NICTA under section 230 of the Act.

Pursuant to section 218 of the Act, these guidelines apply only to ICT licensees. However, NICTA will apply the same arrangements and procedures, including in relation to consideration of claims for confidentiality, to the submissions by parties that are not ICT licensees (although alternative means of submission may be made available to accommodate individual members of the public).

### 1. Means of submission

- 1.1 Written comments and documents must be submitted via email to the appropriate email address, which will be:
  - (a) [consultation.submission@nicta.gov.pg](mailto:consultation.submission@nicta.gov.pg) for public consultations under section 229 of the Act; and
  - (b) [inquiry.submission@nicta.gov.pg](mailto:inquiry.submission@nicta.gov.pg) for public inquiries under section 230 of the Act.
- 1.2 Submissions should be in an electronic format that is text-searchable and allows a 'copy and paste' function. **NICTA may refuse to accept a submission that is not text-searchable or that does not allow text to be "copied and pasted".**
- 1.3 NICTA prefers **to receive submissions in:**
  - (a) Adobe Portable Document Format (PDF) **if the submission is expressed entirely in words and text;** or
  - (b) ~~Microsoft Word format~~ Microsoft Office File format (i.e. Microsoft Word, Microsoft Excel, or Microsoft PowerPoint).
- 1.4 **If a submission contains information that is subject to a claim for confidentiality under section 44 of the Act, then that submission must be in a Microsoft Office File format or, if the respondent intends using the Adobe PDF format, must be accompanied by a copy that is in a Microsoft Office File format. Ideally NICTA would prefer to receive submissions in both of these formats, in which case in the latter case the Adobe PDF version will be regarded by NICTA as the original and the Microsoft Word Office File format version will be regarded as a copy for use internally within NICTA.**
- 1.3 NICTA staff may make alternative arrangements for the submission of written comments by members of the public (for example, to accommodate circumstances where they do not have access to computer or email facilities).

### 2. Observation and extension of submission deadlines

- 2.1 Submissions must be received before the specified deadline to ensure that those comments are taken into account by NICTA. NICTA may, at its discretion, decide not to consider a late

submission or decide to give less weight to a late submission (for example, in circumstances where the timeframe precludes a full and timely analysis of the submission).

- 2.2 A respondent may request an extension of the specified deadline for submissions. Any such request must be submitted via email to the appropriate email address. A requested extension will apply only if NICTA staff grants the request and communicate the extended deadline to the requestor. If NICTA staff grants an extension of time, the extended deadline will be general and apply to all submissions/respondents.

### **3. Acknowledgement of receipt of submissions**

- 3.1 NICTA staff will acknowledge via email receipt of all submissions. Any respondent that has not had its submission acknowledged by NICTA staff within 48 hours of submission should contact the nominated NICTA staff member by telephone to draw the matter to the attention of NICTA staff. A submission for which receipt has not been acknowledged by NICTA staff may be taken not to have been formally received by NICTA.

### **4. Publication of submissions on NICTA's public register**

- 4.1 Submissions will generally be treated as public documents and published on NICTA's public register in accordance with subsection 229(3) and clause 43(1)(k) of the Act unless the respondent has asserted a claim for confidentiality in relation to part(s) or all of the submission and that claim is accepted, in whole or in part, by NICTA pursuant to guideline (5).
- 4.2 Submissions made on or before the original deadline will not be published until such time as the final deadline has passed.

### **5. Treatment of claims of confidentiality**

- 5.1 Claims for confidentiality over any written information submitted to NICTA as part of a public consultation or a public inquiry is governed by section 44 of the Act. Under section 44 of the Act, NICTA ultimately determines whether or not it will accept a claim for confidentiality and exclude from publication the information that is subject to that claim.
- 5.2 A claim for confidentiality must be in writing and received at the same time, and in the same manner, as the submission to which the claim relates. The specific information that the claimant considers to be confidential should be clearly identified. A blanket claim for confidentiality over the entirety of a submission should not be made unless all such information is truly regarded by the claimant as being confidential.
- 5.3 The specific information subject to the claim for confidentiality must be genuinely of a confidential nature and not otherwise publicly available. Statements of opinion would not generally be considered to be confidential.
- 5.4 A claim for confidentiality must be accompanied by the reasons why confidentiality is being claimed. Where it is asserted that specific direct harm would be caused to the commercial or other interests of the claimant, sufficient details must be provided as to the nature and extent of such harm. If no justification is provided as to why the information should be designated as confidential information, then NICTA may conclude that it is not confidential and may publish the information on its public register.
- 5.5 A respondent may submit information that it considers confidential in one of two ways:



- (a) by way of a separate attachment to its submission that can be withheld from publication;  
or
- (b) by submitting two versions of its submission, **namely:**
  - (i) ~~one being a confidential~~ version in Microsoft Office File format for NICTA's reference;  
and
  - (ii) ~~the other being~~ a public version in either Adobe PDF or Microsoft Office File format in which the confidential information is redacted. In any such redacted submission, the information or text for which confidentiality is being claimed should be replaced with black bars (for example: XXXXXXXXXX) to enable readers to identify where information has been removed and how much information has been removed, and to retain the same formatting and page/paragraph numbering as the confidential version.

- 5.6 In response to a claim for confidentiality, NICTA staff will first determine if the information subject to the claim is relevant to the matter under consultation or under inquiry. If it appears that it is not, NICTA staff will invite the claimant to withdraw that information and lodge a replacement submission. If the information subject to the claim appears to be relevant, NICTA will examine the claimant's arguments regarding confidentiality to determine if the claimed harm outweighs the wider public interest in holding an open and transparent consultation or inquiry processes.
- 5.7 Where NICTA is satisfied that the specific direct harm, including, where relevant, any private harm, likely to result from public disclosure justifies a claim for confidentiality, NICTA will exclude from publication the information that is subject to that claim.
- 5.8 In some cases, NICTA may give less weight to confidential information in its determination of matters under consultation or inquiry (for example, where the accepted claim of confidentiality prevents the information from being tested).
- 5.9 Where NICTA is of the opinion that no specific direct harm would be likely to result from disclosure, or where any such specific direct harm is shown but the benefits of disclosure outweigh any harm to the claimant, NICTA may decide to refuse the claim for confidentiality **or parts thereof**. In such an event, NICTA staff will inform the claimant of NICTA's decision(s) and ask the claimant if it therefore wishes to withdraw the information subject to the denied claim. If the claimant requests withdrawal, the information subject to the denied claim will be returned to the licensee and any decision on the matter under consultation or inquiry will be made without any consideration being given to the returned material. (In such a case, if the claimant submitted a redacted version of its submission, then NICTA will consider only the redacted version.)
- 5.10 **If NICTA decides to accept only part of a claim for confidentiality (for example, in relation to some statements or figures but not in relation to other statements or figures in the same submission), then NICTA may amend the claimant's proposed redactions in the version referred to in guideline 5.5(b)(i) above to demonstrate to the claimant, for the purposes of informing the claimant pursuant to guideline 5.9, which of its claims for confidentiality have been accepted. The claimant will then have the opportunity to withdraw, pursuant to guideline 5.9, the information that NICTA does not accept to be confidential.**

## **6 Withdrawal of submissions**

- 6.1 A respondent may withdraw a submission that it has made to a consultation or inquiry:
- (a) at the invitation of NICTA staff as per guideline (5); or

- (b) at any time prior to the specified deadline for receipt of submissions.
- 6.2 Unless NICTA staff have specifically invited a respondent to withdraw all or part of its submission, a request for withdrawal of all or part of a submission must be made in writing and communicated to NICTA staff via email to the same email address to which the submission was sent. NICTA will grant all requests for withdrawal that are consistent with guideline 6.1 however, a submission is not formally considered to have been withdrawn (i.e. the withdrawal does not take effect) until NICTA staff have communicated NICTA's acceptance of the withdrawal request to the relevant respondent via email and returned the relevant information to the licensee (via email).
- 6.3 If a licensee requests the withdrawal only of part of its submission, and that particular part of the submission cannot in the opinion of NICTA staff be separated and withdrawn independently from the rest of the submission (for example, because the submission is in a format that cannot be edited by NICTA staff), then the only option available to the respondent is the withdraw of submission in its entirety.
- 6.4 Requests for extensions of time will be dealt with pursuant to clause 2.2 of these Guidelines. If a respondent requests the withdrawal of all or part of its submission when it has not been invited to do so by NICTA staff, the respondent must submit any replacement submission by the original submission deadline (or the extended deadline if such applies at the time the request is made) in order for that replacement submission to be taken into consideration by NICTA.